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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,607	09/30/2005	Yasuhiko Tabata	17195/005001	6521

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EXAMINER	
SAOUD, CHRISTINE J	

ART UNIT	PAPER NUMBER
1647	

NOTIFICATION DATE	DELIVERY MODE
10/05/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/551,607	Applicant(s) TABATA ET AL.	
	Examiner Christine J. Saoud	Art Unit 1647	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-16 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/30/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, directed to bFGF as the ischemic agent, in the reply filed on 27 August 2007 is acknowledged. The traversal is on the ground(s) that the differences between the three groups are directed only to the dependent claims, therefore, the restriction requirement is considered improper. This is not found persuasive because Unity of Invention was found to be lacking based on the independent claim for the reasons of record in the paper mailed 7/23/07. As the rule states "If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims". However, the independent claim DID NOT avoid the prior art (see Sakakibara et al.), and therefore, there is a problem of lack of unity with respect to the claims that depend from it.

The requirement is still deemed proper and is therefore made FINAL.

Claims 3 and 6, with respect to VEGF and HGF, are withdrawn in part from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 27 August 2007.

Claims 1-2, 4-5, 7-16 and claims 3 and 6 with respect to bFGF are under examination in the instant Office action.

Priority

Applicant is advised of possible benefits under 35 U.S.C. 119(a)-(d), wherein an application for patent filed in the United States may be entitled to the benefit of the filing date of a prior application filed in a foreign country.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

Claims 4-5 and 7-16 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Even though the preambles and/or intended uses differ, the structural and functional requirements of each claim are identical. Applicant is reminded that functional language is given no patentable weight in a product claim. The same product is being claimed multiple times. The dependent claims require no components in addition to the complex of claims 1-3 and 6. Therefore, the claims are not further limiting.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 4-5 and 7-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4-5 and 13 require the same components as claim 1 and fail to further limit the agent of claim 1.

Claims 7, 10 and 14 require the same components as claim 2 and fail to further limit the agent of claim 2.

Claims 8, 11 and 15 require the same components as claim 3 and fail to further limit the agent of claim 3.

Claims 9, 12 and 16 require the same components as claim 6 and fail to further limit the agent of claim 6.

Even though the preambles and/or intended uses differ, the structural and functional requirements of each claim are identical. Applicant is reminded that functional language is given no patentable weight in a product claim. The same product is being claimed multiple times. The dependent claims require no components in addition to the complex of the base claims. Therefore, it is unclear what material limitations are intended, if any, by the intended use language of the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Tabata et al. (Biomaterials 20: 2169-2175, 1999) as evidenced by Wunderlich et al.

Tabata et al. teach gelatin hydrogels containing bFGF. The bFGF was complexed with acidic gelatin. While Tabata et al. does not specifically disclose the zeta potential of the material in aqueous solution, this property would be inherent to the complex. While Tabata et al. does not specifically disclose the molecular weight of the gelatin, this property is also inherent to the gelatin which was used by Tabata et al. This is evidenced by Wunderlich et al. which teach that acidic gelatin has a molecular weight of 185 kD (see table 1). Furthermore, the gelatin of Tabata et al. was prepared in the same manner as that of the instant application, therefore, the properties would be the same. Therefore, the claims are anticipated by the prior art.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine J. Saoud whose telephone number is 571-272-0891. The examiner can normally be reached on Monday-Friday, 6AM-2PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Manjunath Rao can be reached on 571-272-0939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CHRISTINE J. SAUD
PRIMARY EXAMINER

Christine J. Saud